

NOV 15 2005**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LEONEL CARDENAS-HERNANDEZ,

Defendant - Appellant.

No. 05-10229

D.C. No. CR-04-329-KJD/RJJ

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Submitted November 8, 2005^{**}

Before: WALLACE, LEAVY, and BERZON, Circuit Judges

Leonel Cardenas-Hernandez appeals his sentence imposed following his guilty plea to unlawful reentry in violation of 8 U.S.C. § 1326. He contends that the district court violated his constitutional rights in enhancing his sentence under

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

8 U.S.C. § 1326(b) and § 2L1.2(b)(1)(A)(i) of the advisory Sentencing Guidelines based on a fact—the prior commission of a drug trafficking crime—neither proved beyond a reasonable doubt to a jury nor admitted as part of the guilty plea, and that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), is no longer good law. This contention is foreclosed by *United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005).

AFFIRMED.